

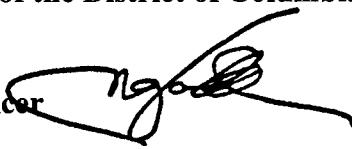
Government of the District of Columbia
Office of the Chief Financial Officer



Natwar M. Gandhi
Chief Financial Officer

MEMORANDUM

TO: The Honorable Vincent C. Gray
Chairman, Council of the District of Columbia

FROM: Natwar M. Gandhi
Chief Financial Officer 

DATE: October 27, 2009

SUBJECT: Fiscal Impact Statement – “Department of Small and Local Business Development Amendment Act of 2009”

REFERENCE: Bill Number 18-332 – Committee Print Shared with OCFO on October 21, 2009

Conclusion

Funds are not sufficient in the FY 2010 through FY 2013 budget and financial plan to implement the provisions of the proposed legislation. The fiscal impact of the proposed legislation would be approximately \$121,120 in FY 2010 and \$605,600 over the FY 2010 through FY 2013 budget and financial plan.

Background

The proposed legislation would amend the Small, Local, and Disadvantaged Business Enterprise Development Assistance Act of 2005 (“Act”)¹ to modify provisions of the legislation regarding compliance and enforcement, joint ventures equity participation requirement, and equity and development participation. Specifically, the proposed legislation would:

- Provide the Director with authority to impose fines for violations of the Act;
- Eliminate the requirement for the Department of Small and Local Business Development (“Department”) to oversee and administer compliance and enforcement responsibilities²;

¹ Effective October 20, 2005 (D.C. Law 16-33; D.C. Official Code § 2-218.01 *et seq.*)

² The proposed legislation repeals subsections (G) and (H) requiring the Department to monitor third-party contracting and procurement relating to Certified Business Enterprises, and preparing the quarterly and annual reports required by D.C. Official Code § 2-218.54.

- Require the D.C. Auditor to provide information and assistance to the Department to perform appeals and audits³;
- Require the Department to determine the dollar amount to be allocated toward Certified Business Enterprises (CBE) from each District agency's expendable budget;
- Require the Commission to hear all requested appeals by business enterprises denied certification by the Department⁴;
- Prove the District of Columbia Small and Local Business Opportunity Commission (Commission) the authority to take actions "necessary or appropriate" to carry out its responsibilities;
- Eliminate the Commission's additional responsibilities such as educating the public about the CBE Program and fostering business opportunities for CBE's⁵;
- Modify the Disadvantaged Business Enterprise Certification requirement to require a business to have average annualized gross receipts totaling \$75 million or less to obtain certification;
- Add a new subsection allowing a joint venture business would qualify for such certification so long as the business meets the requirements outlined in the legislation and can adequately document its status;
- Reduce the number of points awarded to Long-Time Resident Businesses in the evaluation of contract proposals from ten to five;
- Modify the performance and subcontracting requirements for non-construction contracts to require that non-construction contracts would apply to those in excess of \$250,000, unless a waiver has been approved by the Director of the Department;
- Require each prime contractor to provide the D.C. Auditor with an annual report including a list of each subcontractor identified in the subcontracting plan submitted to the Department, information on the price to be paid to the subcontractor, a description of goods and services contracted for, and the amount paid by the contractor to the subcontractor;
- Require Small Business Enterprises or Disadvantaged Business Enterprises receive 20 percent in equity participation and 20 percent in development participation in all development projects supported by District funds and in all development projects that take place on District owned property. The subsection would also require a developer that is unable to meet the 20 percent CBE equity participation requirement to pay the District the outstanding cash equity amount as a fee in lieu of the unmet equity; and
- Require all revenue received from fees paid in lieu of unmet equity would be used to pay vocational training and grants and loans to small businesses. The Deputy Mayor for Planning and Economic Development would be required to administer and manage the grant program for vocational training and small business loans. All administrative costs associated with the implementation of the program would be reimbursed through revenue collected from the fees.

³ Current law (D.C. Official Code § 2-218.13(E)) requires the Commission to provide this information. The proposed legislation would amend current statute to require the Commission and the D.C. Auditor to provide it.

⁴ D.C. Official Code § 2-218.22 requires the Commission to hear all requested appeals for the denial of an application for initial certification, reinstatement, or renewal.

⁵ The proposed legislation would repeal section § 2-218.23 in its entirety.

- Allow business enterprises denied certification from the Department to file complaints with the Department or the Office of the Attorney General for investigation. Additionally, the proposed legislation would allow the Department to refer these complaints to the Office of the Attorney General for investigation.

Current law requires the Mayor to establish procedures to ensure that solicitations are subdivided and unbundled and that small contracts are created to the extent feasible and fiscally prudent. The proposed subtitle would amend current statute⁶ to prohibit, as of the effective date of the proposed legislation, the Office of Contracting and Procurement (OCP) from issuing any new contracts for more than \$100,000 until the Mayor has submitted the proposed procedures by resolution.⁷ If the Council does not approve or disapprove the resolution within 45 days, the proposed resolution would be deemed approved.

Financial Impact

Funds are not sufficient in the FY 2010 through FY 2013 budget and financial plan to implement the provisions of the proposed legislation. The fiscal impact of the proposed legislation would be approximately \$121,120 in FY 2010 and \$605,600 over the FY 2010 through FY 2013 budget and financial plan. The table and notes below describe in detail the cost impact of this position on the budget and financial plan.

The Department of Small and Local Business Development would need to hire one additional Compliance Analyst in order to continue to carry out the compliance and enforcement function of determining the dollar amount to be allocated toward Certified Business Enterprises from each agency's expendable budget.⁸ To carry out this responsibility, the Department would need a total of two FTEs dedicated full-time to this task.⁹ The Department currently has the authority and budget to hire one analyst, but would need to hire a second analyst in order to retain this compliance function.¹⁰

⁶ Section 2347 of the Small, Local, and Disadvantaged Business Enterprise Development Assistance Act of 2005.

⁷ The proposed resolution must be submitted to the Council for a 45-day review period.

⁸ The introduced version of the legislation transferred this compliance and enforcement responsibility to the D.C. Auditor.

⁹ Previously the Department had 5 FTE's dedicated to the review and development of expendable budgets, as well as out other compliance and enforcement responsibilities that have since been transferred to the D.C. Auditor.

¹⁰ The District's FY 2010 Budget and Financial Plan reduced the Department's compliance and enforcement staff by a total of 4 FTEs and a budget of \$342,612 due to the fact that the majority of compliance and enforcement functions were transferred from the Department to the D.C. Auditor pursuant to "Department of Small and Local Business Development Amendment Emergency Act of 2009" in FY 2010 Budget Support Act of 2009. The FY 2010 Budget and Financial Plan transferred 5 FTEs and a budget of approximately \$408,000 to the D.C. Auditor from the Department's Business Development program to carry out these functions; the budget then restored one FTE to the Department and a budget of \$64,751 because it was determined that the Department could not sustain the full staff reduction and still carry out its required responsibilities; therefore the Department's net staff reduction was 4 FTEs. The D.C. Auditor's office retained the authority and budget of the 5 FTEs transferred from the Department; however, the D.C. Auditor's staff was reduced by 1 FTE as part of the FY 2010 gap-closing initiative. Therefore the Auditor's net staff increase in FY 2010 is 4 FTEs.

The Office of the Attorney General would need to hire one additional investigator in order to absorb the additional responsibility of investigating complaints filed by business enterprises that have been denied certification by the Department. Currently, all complaints are filed and investigated by the Department.¹¹

The D.C. Auditor would be able to absorb the cost of implementing requirements of the proposed legislation with their existing budget. As part of the FY 2010 budget and financial plan, the D.C. Auditor's personal service budget was increased by 4 FTEs which is adequate to implement the additional responsibilities in the proposed legislation.

Finally, the proposal to prohibit OCP from issuing contracts of \$100,000 or more could delay the District's ability to obtain necessary goods and services in a timely manner, impacting the delivering of public services; however, if proposed procedures are submitted by the Mayor to the Council for approval and the proposed rules are approved within the 45 day approval period, the provision would not have a significant impact on District's contracting and procurement process.

Estimated Fiscal Impact of Bill 18-332					
Department of Small and Local Business Development Amendment Act of 2009					
FY 2010 through FY 2013					
	FY 2010	FY 2011	FY 2012	FY 2013	Total
OAG Investigator ^a	\$62,524	\$83,365	\$83,365	\$83,365	\$312,620
Department Compliance Analyst ^b	\$58,596	\$78,128	\$78,128	\$78,128	\$292,980
Total Negative Fiscal Impact	\$121,120	\$161,493	\$161,493	\$161,493	\$605,600

^a Total annual compensation for an additional full-time Investigator (Grade 12/step 4), including fringe benefits, would be \$83,365. It is assumed the additional FTE would be hired once the legislation became effective and would be employed with the District for nine months of the fiscal year.

^b Total annual compensation for an additional full-time Compliance Analyst (Grade 12/step 3), including fringe benefits, would be \$78,128. It is assumed the additional FTE would be hired once the legislation became effective and would be employed with the District for nine months of the fiscal year.

¹¹ The Department receives an average of 6 complaints a year. The Department anticipated forwarding 25 percent of these cases to OAG for investigation.